IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 254 of 1987
with
FIRST APPEAL No. 255 of 1987
and
FIRST APPEAL No. 256 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-
and

MR.JUSTICE H.K.RATHOD sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
No

2. To be referred to the Reporter or not? No :

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
No

5. Whether it is to be circulated to the Civil Judge? No :

NEW INDIA ASSURANCE CO.LTD.
Versus
SHANTABEN WD/O.ZAVERBHAI PARSHOTTAMBHAI
(in First Appeal No. 254/87)

NEW INDIA ASSURANCE CO.LTD.
Versus
Mahendraprasad Kanchanlal & ors.
in (First Appeal No. 255/87)

NEW INDIA ASSURANCE CO.LTD.
Versus
Dineshkumar Jayantilal Patel

(in First Appeal No.256/87)

Appearance:

1. First Appeal No. 254 of 1987
   MR RAJNI H MEHTA for Petitioner
   NOTICE SERVED for Respondent No. 1
   RULE SERVED for Respondent No. 6, 7

2. First AppealNo 255 & 256 of 1987
   MR RAJNI H MEHTA for Petitioner
   RULE SERVED for Respondent No. 1, 6, 7
   NOTICE SERVED for Respondent No. 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA and
MR.JUSTICE H.K.RATHOD

Date of decision: 08/02/2000

ORAL JUDGEMENT

(Per : D.C.Srivastava, J.)

1. These three Appeals arising out of the same incident involving common question of law and fact can be disposed of by common Judgment.

2. These Appeals have been preferred by the New India Assurance Co.Ltd. challenging the award on the ground that the Insurance Co. is not liable to pay any compensation to the claimants.

3. It appears from the record that the accident took place on 17.8.1982 on Ankleshwar - Rajpipla Road at about 7.00 p.m. wherein Truck No. GTK 5576 insured with the appellant turned turtle and fell in to a revine as a result thereof one person died and others received injuries. It was alleged that because the truck was being driven rashly and negligently at a very fast speed hence the accident occured. The opponent No.1 in the Tribunal was driver whereas opponent No.2 was the owner of the Truck and the opponent No.3 is Insurance Company.

4. The claim petition was contested on variety of grounds including denial of allegation that the truck was being driven rashly and negligently. Plea of contributory negligent was also raised and it was also averred that compensation claimed is excessive. Insurance Company has specifically pleaded that there was breach of condition of the insurance policy hence the Insurance Company is not liable.

5. In these Appeals all the respondents were served, but they have not put in their appearance. As such Shri Rajni H. Mehta, learned Counsel for the appellant was heard. The record and Judgment of the Tribunal were examined.

6. The dispute involved in these Appeal is very limited and it is to this extent whether in view of Insurance policy, motor permit and the recent verdict of the Apex Court in Smt. Mallawwa v/s. Oriental Insurance Co.Ltd., reported in JT 1998 (8) SC 217, the Tribunal was in error in fastening the liability to pay compensation upon the appellant.

7. Shri Mehta has taken us through the discussion of the Tribunal contained in Para : 28 of its Judgment. We have examined the aforesaid discussion as contained in Paras : 28 to 32 of the Judgment. It is now established that the truck involved in the accident was a goods vehicle. It is equally undisputed that it was insured with the appellant. Contradictory case was taken by the claimant in the claim petition and in evidence. Some time it was pleaded that the passengers were travelling in the truck along with their goods and at another place it was pleaded and stated that they were going with their personal effects. The Tribunal considered this conflicting stand of the claimants and observed that because no goods are specified in the application and it is not the allegation in the claim petition that the deceased and the injured persons were going with their goods therefore it can only be said that they were paid passengers in the truck. This categorical finding of the Tribunal that the injured and the deceased were going in the Truck as paid passengers cannot be interfered with because there is no evidence to the contrary and there is no error in approach of the Tribunal in assessing the evidence, and conflicting stand and coming to this conclusion. Consequently it is now established that the deceased and the injured were travelling in the truck as paid passengers.

8. On these factual observations it has to be seen whether legally as well as within the ambit of insurance policy and motor permit there can be any liability of the Insurance Company to pay compensation for the loss of life and injuries sustained by the passengers travelling in the illfated truck.

9. The matter can be examined from three angles. One is whether any such liability can be fastened in view of the Apex Court's verdict in Smt. Mallawwa's case

(supra). The second angle will be whether the insurance company can be held liable for the alleged accident to pay compensation to the legal representatives of the deceased and the injured in terms of the insurance policy and the third is whether within the terms of motor permit, as observed by the Tribunal, there can be any liability of the Insurance company.

10. Taking of the third angle first, the motor permit is Ex.45. It was issued under the old Act and was subject to the provisions of Section 59(3) of the Old Act. Under the new Act Section 59(3) of the Old Act corresponds to Section 84. However, reference of the new Act is not necessary. Permit Ex.45 is on the printed proforma as prescribed under the Rules, especially Rule : 81 for public Carrier Permit. It is specifically mentioned in Column No.6 that the permit was issued to carry public goods. Interpretation of the Tribunal is that this permit did not specifically prohibit carrying of passengers hence the driver as well as owner of the truck were permitted to carry passengers in the truck. We are unable to accept this interpretation of the Tribunal. If condition No.6 of the permit is clear it requires no interpretation. The so called interpretation of the Tribunal can hardly be sustained. The golden rule of interpretation is that literal meaning has to be given to the contents of a document or contents of a portion of a document. The literal meaning of clause (6) of the permit is that it was issued to carry public goods. If there would have been specific prohibition, of course it could be pressed in service. Applying golden rule of interpretation we are of the view that clause (6) means that permit was issued to carry public goods and not for any other purpose. This, therefore, rules out the use of truck for carrying passengers. Clause (7) of the Permit also provides that the vehicle can be used as goods vehicle otherwise than for hire, etc. Thus, from these two clauses it is clear that the permit was issued only for carrying public goods and not for carrying passengers. We are, therefore, unable to accept the interpretation of the permit as given by the Tribunal. Thus, under the term of the permit the carriage of passengers was impliedly prohibited and carriage of public goods was expressly permitted and therefore the Insurance Company cannot be held liable to pay compensation.

11. The second angle from which the matter can be viewed is terms and conditions of the Insurance Policy. Ex.84 is the Insurance Policy in which typed slip is pasted in the column of terms and conditions regarding

limitation as to use. According to Shri Mehta, learned Counsel for the appellant, this chit has not been correctly pasted and conditions No.2 & 3 have been cut before being pasted. In the Memo of Appeal in ground No.3 it is mentioned that clause (3) provides that the policy did not cover risk for use for the conveyance of passengers for hire or reward. Whatever may be the reason for not pasting correct terms and conditions regarding limitation as to use, yet whatever is pasted in it one can see that the limitation as to use was only under Public Carriers permit within the meaning of Motor Vehicles Act, 1939. If the use of goods vehicle was permitted only under Public Carrier's permit then we have no option but again to refer to public carrier permit Ex.55 which in clear term prescribed use of vehicle only for carrying goods and for no other purpose. Thus, even under the terms of the insurance policy the insurance company, the appellant, cannot be held liable to pay any compensation.

12. Then we come to the last ground, namely, the verdict of the Apex court in Smt. Mallawwa's case (supra). The Tribunal in its judgment has placed reliance upon a decision in the case of National Insurance Co.Ltd. v/s. Nathibai Chacurabhuj & ors., reported in 1982 ACJ 153 and placing reliance upon this judgment of this Court the Tribunal was of the view that the Insurance Company is liable to pay compensation. Needless to say that on this point the view of this Court and other High Courts were divergent and all conflicting views were brought to the notice of the Division Bench of the Apex Court and the Division Bench of the Apex Court referred the matter to a larger Bench. The larger Bench of the Apex Court considered all conflicting views of various High Courts and approved the view of the Full Bench of Orissa High Court in New India Assurance Co. Ltd. v/s. Kanchan Bewa & ors., reported in 1994 ACJ 138. The question before the Apex Court briefly was what should be the test in determining whether the passenger was carried in a goods vehicles for hire or reward or not. The Apex Court laid down as under :

"The correct test to determine whether a passenger was carried for hire or reward, would be whether there has been a systematic carrying of passengers. Only if the vehicle is so used then that vehicle can be said to be avehicle in which passengers are carried for hire or reward. It would not be proper to consider a goods vehicle as a passenger vehicle on the basis of a single use or use on some stray occasions at that

vehicle for carrying passengers for hire or reward."

Now if this test laid down by the Apex Court is applied to the facts of the case before us, the tribunal has returned categorical finding that all the passengers in the truck in question were travelling as paid passengers and they were not travelling with their goods. Consequently, according to the Tribunal it was not a case where the passengers hired the truck for carriage of their goods or personal effects. If they were paid passengers then it has to be established further, according to the Apex Court, that such carriage of passengers in the goods vehicle was not on one or two occasion or on stray occasions, rather such carriage should have been frequently and generally. Carriage of passengers even for hire or reward on one occasion or on stray occasions could not, in the opinion of the Apex Court, render the vehicle to be used for carriage of passengers. Consequently, applying the test laid down by the Apex Court in Smt. Mallawwa's case (supra) we are of the view that in the absence of regular use of the truck for carriage of passengers for hire or reward the liability of the Insurance Company cannot be up-held. The Tribunal was, therefore, in apprent error in concluding on the basis of Motor Permit and the Insurance Policy as well as on the basis of the verdict of this Court that the Insurance Company is liable. If this is so then all the three Appeals are liable to be allowed and are hereby allowed.

13. In the result, all the three Appeals are allowed. The Award of the Tribunal against the Appellant only in these three Appeals is hereby quashed. The Award against other respondents shall remain intact. On the information given by Shri Rajni Mehta, learned Counsel for the appellant that the appellant has deposited the entire amount of compensation, cost and interest in the Tribunal and a portion thereof seems to have been paid by the Tribunal to the claimants, the balance amount of compensation, cost and interest deposited by the appellant shall be refunded by the Tribunal forthwith to the appellant.

sd/-
(D. C. Srivastava, J.)

Date : February 08, 2000 sd/-
(H. K. Rathod, J.)
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